IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3324 OF 2006.

Rupee Cooprative Bank Ltd.
Branch Thane. ... Applicant.
Versus.
State of Maharashtra & others. ... Respondents.

Shri C.P.Deogitrikar for the Applicant.
Shri S.V.More, A.P.P. for Respondent No.1-State.
Shri S.R.Mishra for the Respondents Nos.2 to 5.

CORAM : ABHAY S.OKA, J.

DATED : 19th December, 2006.

P.C.:

1. Heard the learned Advocate for the Applicant and the learned Advocate appearing for the Respondents Nos.2 to 5. The Respondents Nos.2 to 5 are the accused Nos.1 to 4. The cheque has been issued by the Respondent No.5 (accused No.4). The Respondents Nos.3 and 4 are stated to be partners of the Respondent No.2 as well as Respondent No.5.

2. I have perused the complaint. There are no requisite averments in the complaint as are held mandatory in the decision of the Apex Court in the case of SMS Pharmaceuticals Ltd. v/s. Neeta Bhalla and another [(2005) 8 S.C.C. page 89]. The Apex Court has held as under:

> "(a) It is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an

essential requirement of section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of section 141 cannot be said to be satisfied."

The necessary averments are completely absent in this case in so far as the Respondents Nos.3 and 4 are concerned.

3. So far as Respondent No.2 is concerned, no case is made out for grant of leave as the cheque is not issued by the 2nd Respondent-firm. In so far as the Respondent No.5 is concerned, in view of section 139 of the Negotiable Instruments Act, 1881 leave deserves to be granted.

4. Hence the following order is passed:

i) Application for leave is rejected in so far as Respondents Nos.2 to 4 are concerned. Leave to prefer an Appeal is granted which is confined to the Respondent No.5 (Accused No.4).

ii) Appeal is admitted. Call for the Record and Proceedings.

iii) The Advocate appearing for the Respondent No.5 waive service of notice of Appeal.

Judge.